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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 197

MARY E. DOBLE,
Petitioner,

vs.

WALTER E. BUCK, R. STANLEY DOLLAR, HERBERT FLEISHHACKER, MORTIMER FLEISHHACKER, WALTER A. HAAS, WILLIAM F. HUMPHREY, J. C. MCKINSTRY, ALFRED B. SWINERTON and JOSEPH O. TOBIN,
Respondents.

PETITION FOR REHEARING AND FOR RELIEF UNDER JUDICIAL CODE SECTION 240.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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PETITION FOR REHEARING AND FOR RELIEF UNDER JUDICIAL CODE SECTION 240.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Owen J. Roberts, Hugo L. Black, Stanley Reed, Felix Frankfurter, William O. Douglas, Frank Murphy, Robert H. Jackson, and Wiley Rutledge, Associate Justices of the Supreme Court of the United States:

Mary E. Doble, the petitioner above named, hereby applies to this Court for a rehearing and reconsideration

of the order entered October 9, 1944, denying application for writ of certiorari.

In addition, said petitioner applies for such relief by way of memorandum opinion, or order or summary process as this Court may have power to issue under Judicial Code Section 240, to compel compliance by the Circuit Court of Appeals for the Ninth Circuit, and by the Southern Division of the United States District Court for the Northern District of California with the following provisions of federal law, under which petitioner is entitled to a determination of her case on the merits in said District Court, viz.:

United States Constitution Article III, Sections 1 and 2; Article VI, and Amendment V;

Judicial Code, Section 24 (28 USCA 41).

Petitioner also applies for such summary relief to obtain compliance with the following decisions of this Court under which such jurisdiction is recognized, viz.:

Cohens v. Virginia, 19 US (6 Wheat.) 264 at 403;

Chicago Life Ins. Co. v. Needles, 113 US 574;

California Bank v. Kennedy, 167 US 362;

Wyman v. Wallace, 201 US 230;

Siler v. Louisville & Nashville RR Co., 213 US 175;

Macon Grocery Co. v. Atlantic Coast Line RR Co., 215 US 501;

The Fair v. Kohler Die Co., 228 US 22;

Jones National Bank v. Yates, 240 US 541;

Texas & Pacific Ry. Co. v. Rigsby, 241 US 33;

Chesbrough v. Woodworth, 244 US 72;

Texas & New Orleans RR Co. v. Brotherhood of Ry. & Steamship Clerks, 281 US 548.

Statement in Support of Application.

In denying an application for unrestricted review by certiorari, this Court has failed to act with respect to matters which are not the subject of a discretion. Article VI of the Constitution provides:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land * * *"

Petitioner had an absolute right to file her suit in the United States District Court for the Northern District of California. That right was guaranteed by Section 24 of the Judicial Code. That section is a *law of the United States.* That law was made *in pursuance* of a provision of the Constitution of the United States, viz.: Article III, Sections 1 and 2, which provide:

> "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish * * *
>
> "The Judicial Power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority * * *"

The meaning of these provisions is settled.

That meaning is established by the decisions above cited.

Petitioner's case comes directly within those precedents. It is a case requiring construction and interpretation of Federal law. It is a case involving violation of a duty alleged in good faith to arise under a Federal law. It is

a proceeding to enforce a specific remedy claimed in good faith under a Federal statute.

This Court has deemed is unnecessary to reexamine those precedents. That ruling necessarily presents, as a corollary, a question upon which the Court should act, viz.: Enforcement of existing law to guarantee petitioner the same right to Federal jurisdiction which is recognized and accorded to other litigants under like conditions.

Due process under the Fifth Amendment requires recognition and enforcement of that right.

The supremacy of Federal law under Article VI requires enforcement of that right.

Nature of the Judicial Function.

Petitioner has invoked the jurisdiction of this Court to obtain relief. The duty created thereby differs from that imposed on a legislative or other body holding merely a discretionary power. (*Cohens v. Virginia*, 19 US 264 at 403.)

Process Available.

Under Section 240 of the Judicial Code, this Court has broad powers of supervision over lower Federal Courts. It may grant full review. It may grant a limited review. It has power to file a memorandum opinion, or order, in a case where the law is settled and a lower Court has exhibited disobedience of precedent. There is power to grant a writ conditionally—to deal with this situation by an order to show cause, or by putting the matter on the summary docket.

By mandamus or by special process under Section 240 of the Judicial Code, this Court has power to enforce compliance with its decisions.

Petitioner applies for such process and for issuance of an appropriate order requiring the Circuit Court to set aside its judgment, and commanding the District Court to determine, on the merits, all questions diclosed by the pleading now on file in said Court.

Petitioner has relied, to her prejudice, upon the decisions cited. A miscarriage of justice will result in case of a failure to grant this relief.

In the alternative, petitioner applies for a rehearing and reconsideration of the order denying certiorari and for a hearing in this Court upon any questions which are not deemed to be settled by precedent.

Dated, San Francisco, California,
October 31, 1944.

AARON M. SARGENT,
Attorney for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that in my judgment the foregoing Petition for Rehearing and for Relief under Judicial Code, Section 240, is well founded; and that the same is presented in good faith and not for purposes of delay.

Dated, San Francisco, California,
October 31, 1944.

AARON M. SARGENT,
Attorney for Petitioner.